

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA HULL)	
Claimant)	
VS.)	
)	Docket No. 210,556
SABERLINER INDEPENDENCE)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Jon L. Frobish's August 2, 2001, preliminary hearing Order.

ISSUES

This is the second preliminary hearing held and the second preliminary hearing Order entered in this case. The first preliminary hearing was held on December 11, 1996,¹ and the first preliminary hearing Order was entered on December 13, 1996. In that preliminary hearing Order, the Administrative Law Judge (ALJ) found claimant had failed to prove her porphyria cutanea tarda (PCT) condition arose out of and in the course of her employment with respondent. Thus, the ALJ denied claimant's request for authorized medical treatment and temporary total disability compensation.

After the December 13, 1996, preliminary hearing Order, claimant took the deposition of Michael D. David, D.O. Dr. David was claimant's family physician and had treated claimant for general health problems since July 1990. Dr. David also treated claimant for her PCT condition along with referring claimant for treatment recommendations to dermatologists. At her attorney's request, claimant was also seen on

¹ The certified shorthand reporter has indicated on the first preliminary hearing transcript that the preliminary hearing was held on December 11, 1997, instead of December 11, 1996. But the workers compensation administrative file, the ALJ's December 1996, preliminary hearing Order that referenced December 11, 1996, as the date of the preliminary hearing, indicate the certified shorthand reporter made an error when she transcribed the preliminary hearing to show the date of the preliminary hearing as December 11, 1997, instead of December 11, 1996. The second preliminary hearing was heard on August 1, 2001.

December 14, 2000, by physical medicine and rehabilitation physician Pedro A. Murati, M.D.

After some four years and eight months from the December 13, 1996, preliminary hearing Order that denied claimant's request for workers compensation benefits, claimant requested another preliminary hearing which was held on August 1, 2001. At that hearing, claimant's only request was for the respondent to pay as an unauthorized medical expense the \$375 bill Dr. Murati charged for claimant's independent medical evaluation. The August 1, 2001, preliminary hearing transcript does not contain any additional testimony from claimant. Admitted into evidence was claimant's exhibit one which was Dr. Murati's December 14, 2000, independent medical evaluation of claimant and his bill for \$375, claimant's exhibit two which was a follow up report dated May 24, 2001, from Dr. Murati and respondent's exhibit one which was a medical report from David K. Eslicker, D.O. to respondent's attorney dated February 20, 2001.

In the ALJ's August 2, 2001, preliminary hearing Order, he again found that claimant had failed to prove that her PCT condition arose out of and in the course of her employment with respondent. Thus, the ALJ denied claimant's request for payment of Dr. Murati's medical bill as an unauthorized medical expense.

Claimant appeals and contends that Dr. David's testimony and Dr. Murati's independent medical examination report both are persuasive and prove that claimant's PCT condition was either caused or, at the very least, exacerbated by claimant's work environment. Thus, claimant requests the Appeals Board (Board) to find her claim compensable and order respondent to pay Dr. Murati's medical bill as an unauthorized medical expense.

But respondent contends that the ALJ's August 2, 2001, preliminary hearing Order should be affirmed. Respondent argues claimant has again failed to prove that her PCT condition was either caused or exacerbated by claimant's work environment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

The Board concludes the preliminary hearing Order should be affirmed. The Board acknowledges that Dr. David, a family practice physician, and Dr. Murati, a physiatrist, both expressed opinions that claimant's exposure to polychlorinated hydrocarbons at work either caused or exacerbated claimant's PCT condition.

David K. Eslicker, D.O., a dermatologist, saw claimant for the first time on November 10, 1995 and provided treatment recommendations for claimant until he last saw her in 1998. In a report dated February 20, 2001, to respondent's attorney, Dr. Eslicker opined that claimant was exposed to supplemental estrogen therapy, ingestion of ethanol as well as exposure to polychlorinated hydrocarbons at work. All three of these agents have in the

past been associated with causing PCT. But Dr. Eslicker concluded, "It is not possible for me to say which of the offending agents initially triggered her porphyria."

Because Dr. Eslicker is a dermatologist and therefore a specialist on skin disorders, the Board finds greater weight should be given to his opinion. Thus, giving greater weight to Dr. Eslicker's opinion, the Board concludes that claimant has again failed to prove that her exposure to polychlorinated hydrocarbons while working for the respondent either caused or exacerbated her PCT condition. Therefore, since the Board has found the claim not compensable, claimant is not entitled to workers compensation benefits which would include the unauthorized medical expense.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Jon L. Frobish's August 2, 2001, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

c: Kevin Stamper, Attorney for Claimant
Leigh C. Hudson, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director